IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

MFA.No. 1429 of 2001()

WCC.17/1998 of W.C.C. & CONTRACT L.BOARD,TVM.
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APPELLANT/1ST OPPOSITE PARTY

M/S S.K. AGENCIES, V.V. HOUSE
VANIYAR STREET, KATTAKKADA ROAD
BALARAMAPURAM REPRESENTED
BY ITS MANAGING PARTNER SRI.S.KUMARESAN

BY ADV. SRI.R.S.KALKURA

RESPONDENTS/APPELLANT / 2ND OPPOSITE PARTY
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1. V.MOHANAN, S/O VELAYUDHA PANICKER
ELLUVILA PUTHENVEEDU, THEMPAMUTTOM
RUSSELPURAM P.O, BALARAMAPURAM

2. SMT. V.VIJAYALAKSHMI, S.K. AGENCIES
V.V.HOUSE, VANIYAR STREET
KATTAKKADA ROAD, BALARAMAPURAM
TRIVANDRUM

BY ADV. SRI.J.HARIKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19-06-2007 THE COURT ON 19/06/2007 DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR . J.

M.F.A. No.1429 of 2001

Dated this the 19th day of June 2007

JUDGMENT

The first opposite party in W.C.C. 17/1998 on the file of the Court of the Commissioner for Workmen's compensation,Thiruvananthapuram is the appellant. The 1st respondent filed a petition under Section 22 (2) of the Workmen's compensation Act claiming an amount of Rs. 1,00,000/- as compensation against the appellant. It was alleged that the 1st respondent was a workman employed by the appellant and on 9-12-1996 he sustained injury during the course of his employment due to falling of a rice sack on the right leg. It is alleged that due to the above accident he sustained the compound communited fracture, both bones of right leg and lacerated wound right thigh and leg. According to him he was getting Rs. 4,500/- as monthly wages.

2. The appellant contested the matter. It was contended that S.K Agencies is a proprietor concern and it was not a partnership firm as alleged in the application. It was contended that the 2nd opposite party was an unnecessary party and she had no involvement in the business. It was contended that the 1st respondent Sri.V.Mohanan is not a workman coming under the definition given in Section 2 (1) (n) of the Workmen's Compensation Act. . It was also contended that no incident

took place on 9-12-1996. It was also contended that the 1st respondent was not a card holder or a headload worker under the Kerala Head Load workers Act. The 1st respondent was no right to do loading and unloading work in that area. The 1st respondent Sri.V.Mohanan is not a Head load worker as defined under the provisions of the Kerala Head Load Worker's Act and as such he is not entitled to get any compensation under the provisions of the Workmen's compensation Act.

3. After considering the evidence on record the Commissioner found that the 1st respondent was a workman employed by the appellant regularly and he sustained injuries during the course of his employment on 9-12-1996. Accordingly the Commissioner fixed an amount of Rs. 33,768/- as compensation. Chalenging that order this M.F.A. is filed.

4. Learned counsel appearing for the appellant has argued that the 1st respondent is not a workman as defined in Section 2 (1) (n) of the Workmen's Compensation Act because it is not a category specified in schedule II of the Act. It is also contended that the 1st respondent is not a head load worker governed by the provisions of the Head load Workers Act as such he is not entitled to get any compensation under the provisions of the Workmen's Compensation Act. Section 24 of the Headload Workers Act provides that the provision of Workmen's

Compensation Act and Rules made thereunder shall mutatis mutandis apply to the headload workers employed in any establishment and for that purpose, they shall be deemed to be workmen with the meaning of that Act. It is to be noted that a the Head Load Workers Act came into force only in the year 2002 and this incident took place in the year 1996. So the provisions of the Head load Workers Act have no application to the facts of this case.

5. It is true that there is no documentary evidence to prove that the 1st respondent was working in the establishment of the appellant. Ext.A1 shows that immediately after the accident on 9-12-1996 the first respondent was admitted in the Medical college Hospital . The discharge summary shows that the injury happened on account of the falling of stacked rice sacks on his leg. The workman as well as the witnesses gave evidence to the effect that immediately after the accident the 1st respondent was taken to the Medical College by the employer along with AWs 1 &2. I do not find any reason to disbelieve his statement in Ext.A1 to hold that the 1st respondent sustained injuries on 9-12-1996 due to the falling of rice sacks. The evidence of AWs 1 to 3 is consistent on a point that the 1st respondent working as an attached head load worker of Sudha Agencies which was subsequently renamed as S.K.Agencies. The Commissioner who had occasion to watch the demeanour of the witnesses had chosen to accept the evidence of the two independent

witnesses examined, to hold that the 1st respondent was an attached permanent worker of the appellant. That is a finding of fact based on evidence. The same is not liable to be interfered in this appeal. There is no question regarding the quantum of compensation fixed is also correct. No substantial question of law arises in this appeal and this appeal is only to be dismissed.

6. In the result this M.F.A. is dismissed.

sd/-
K.PADMANABHAN NAIR, JUDGE

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